Before The

Federal Communications Commission

Washington, DC 20554

In the Matter of:	)	ET Docket No. 04-295
Communications Assistance for Law	)	RM-10865
Enforcement Act and Broadband Access and	)	
Services	)	

COMMENTS OF THE SMITHVILLE TELEPHONE COMPANY

1. The Smithville Telephone Company provides broadband Internet access in a rural area of Mississippi to a small number[1] of customers. Availability of affordable broadband access to all Americans is a goal of the Commission, but expensive mandates like that proposed in this Notice can easily block the path to that goal.

2. Small broadband access providers like Smithville Telephone should be exempted[2] from expensive compliance with CALEA requirements. To recover costs, as suggested by Law Enforcement, from the few customers of a small[3] broadband provider would require ratepayers to pay increased rates that are certainly not likely to be minimal. If the costs of compliance are

[1] As of November 8, 2004, there are 46 DSL subscribers to the Smithville Telephone Company's high-speed service.

[2] If broadband access providers are to be classified as "telecommunications carriers," then small broadband providers can be exempted by Commission rule as provided in 47 USC, Chapter 9, 1001 (8)(c)(ii).

[3] The Commission does not require reporting of broadband access numbers from providers with less than 250 customers, so the actual number of small providers and their customers, primarily in rural areas, is likely unknown.

significant, a small broadband provider may have to reluctantly discontinue broadband access services, leaving individuals, families and businesses without high speed Internet access. If an exemption is not granted, then some sort of funding should be provided so rural broadband customers are not disadvantaged.

3. Small broadband providers cannot recover the costs of CALEA implementation from broadband customers because there simply are not enough customers to spread the costs over. Providing broadband service in rural areas is more expensive than in urban areas, mostly due to higher facility costs, and the business viability for rural broadband is shaky at best. At the Smithville Telephone Company, a requirement to implement CALEA for our DSL service will require a decision between either implementing CALEA or exiting the broadband business.

4. The Commission may lack the information needed to fully assess the impacts of CALEA and other regulatory requirements on small broadband providers because the Commission has not requested information about small providers. Broadband data is gathered from the FCC Form 477, but providers with less than 250 high-speed connections in a state are not required to participate in this reporting. As the Commission's own report[4] on broadband penetration states, "In particular, we do not know how comprehensively small providers, many of which serve rural areas with relatively small populations, are represented in the data summarized here." Why not specifically ask for this information? The Commission may find the penetration of broadband in rural areas is higher than generally believed. Making good public policy requires accurate information.

5. Is "Trusted Third Party" the answer that will lower CALEA costs for small providers? Of the two third party alternatives described in the NPRM, forwarding all packets from a surveillance subject to an external system may be most feasible for small providers as, apparently, no processing of the target packets would be required by the provider and required modifications to existing network equipment may be less. There are, however, unknowns that could easily make this approach expensive and uneconomical for small providers. Assuming that the broadband

[4] FCC Report "High-Speed Services for Internet Access: Status as of December 31, 2003" issued in June, 2004.

provider's network equipment can be modified without substantial costs, the proposed architecture would require transmission facilities between the provider's location and the location of the external system and also between the external system and the law enforcement premises. As all packets from at least one[5] broadband customer are forwarded, and the peak rate of packet flow could be high, these facility links would likely have to be fairly high bandwidth. Technical requirements, like delay and packet loss limits, for the external system equipment and facilities are not known. Who pays for these links? CALEA places responsibility on law enforcement for facility costs. Are these links permanent or installed only when there is an authorized surveillance? How would the arrangement be tested prior to use?

6. Verisign's architecture diagrams[6] show an arrangement very similar to the Commission's first third party alternative. In Verisign's diagram, the service bureau would provide network equipment on the broadband provider's premises, facilities (connectivity), the processing of surveillance packets, and, apparently, all the support necessary for authorized surveillance. It seems law enforcement would be responsible for at least the facility costs. The costs of this approach, or any third party approach, may be lower for the small broadband provider than those required without a service bureau, but this could also be an immaterial distinction if the costs are still so high as to make providing broadband services uneconomical for small providers.

7. The Commission requests comments on how discrete groups of broadband Internet access providers, like small businesses providing access in rural areas, could be identified for possible exclusion from the Substantial Replacement Provision. The Smithville Telephone Company suggests that any broadband provider with less than 250 high-speed lines that is not a provider of managed VoIP services could be so identified. For competitive neutrality, all small broadband providers should have the same requirements regarding CALEA.

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[5] Capacity issues and the requirement to provide multiple simultaneous surveillances could increase required facility sizes and costs.

[6] Appendix A to Verisign's reply comments of 27 April, 2004.

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